But a similar injunction was granted upon different grounds where the claims asserted were not of a meritorious character. *Illinois, etc., R Co.* v. *Baker, supra.* In this case the court stressed the fact that the plaintiffs did not have a meritorious claim. The court reasoned that if no one of the plaintiffs was entitled to recover from the defendant, it would be unreasonable to subject the defendant to the unusual hardship, expense and inconvenience of defending these multitudinous suits in a court from the judgment of which there could be no appeal because of the jurisdictional amount involved. To withhold this equitable jurisdiction in case of an adverse judgment would be tantamount to compelling the defendant to pay a large sum of money to satisfy the various judgments without an opportunity to have his rights determined by a court speaking with more authority than a justice's court. The court further reasoned that to invoke the jurisdiction of equity would not, in any event, place the substantial rights of the plaintiffs in jeopardy, because they had no substantial rights which could be jeopardized or prejudiced; nor would it deny to them the right to seek lawful redress in any court established by law, because they had suffered no injury that would entitle them to such redress. See *Illinois, etc., R. Co. v. Baker, supra.*

Upon a similar state of facts it was held that where one person is made defendant in a large number of suits involving different plaintiffs but the same facts and circumstances, equity will intervene by injunction to prevent a multiplicity of such suits, especially when the suits are not based upon a meritorious claim. *Buckeye Garment Co.* v. *Hieatt,* 177 Ky. 783, 198 S. W. 21.

A like conclusion was reached where thirty nine members of a fraternal organization instituted separate suits in a justice's court against the Supreme Lodge to determine the right of the lodge to put in force an increased rate of assessment and to recover the assessments previously paid to the lodge. The question of the merits of the suits did not arise, and the decision was based upon the equitable jurisdiction of the court to prevent a multiplicity of suits. *Supreme Lodge of Fraternal Union of America* v. *Ray* (Tex. Civ. App.), 166 S. W. 46.

Upon a similar question, an injunction was granted where the separate suits brought in a justice's court were alleged to be not only groundless but vexatious as well, and brought for the purpose of annoying the defendant. *Jordon* v. *Western Union Telegraph Co.,* 69 Kan. 140, 76 Pac. 396.

The decision in the instant case is evidently sound by both reason and authority.

EXECUTORS AND ADMINISTRATORS—LIABILITY FOR DEPRECIATION OF ESTATE.—A decedent, by will, gave his property to his executor in trust. The principal asset of the estate consisted of a retail liquor business. Under authority of the will, the executor continued the business, meanwhile making several unsuccessful efforts to sell it. Finally, upon the advice of counsel, the business was offered for sale at public auction. The highest bid, being insufficient to pay the decedent's debts, was

refused. Subsequently, by reason of Federal legislation concerning the sale of liquor, the business became practically worthless. The creditors brought an action to surcharge the executor for loss to the estate through depreciation. *Held,* the executor is not liable. *In re Murnaghan's Estate* (Pa.), 107 Atl. 886.

The degree of care, diligence and prudence required of executors is that which ordinary business men exercise in the management of their own affairs. See *Shepherd* v. *Darling*, 120 Va. 586, 91 S. E. 737; *In re Bush's Estate*, 89 Neb. 334, 131 N. W. 602. Negligence or want of due care in the management of the estate is always a question of fact to be determined upon the merits of each particular case. *Henderson Trust Co.* v. *Stuart*, 108 Ky. 167, 55 S. W. 1082, 48 L. R. A. 49. An executor is in the nature of a trustee, and, as such, is required to exercise the utmost good faith and fair dealing in all transactions concerning the estate. See *In re Roach's Estate*, 50 Ore. 179, 92 Pac. 118. When an executor acts in good faith and with reasonable prudence, he is not to be held personally liable for losses to the estate due to his management. *In re Mercantile Trust Co.*, 156 App. Div. 224, 141 N. Y. Supp. 460; *Hill* v. *Evans*, 114 Mo. App. 715, 91 S. W. 1022. Nor can he be held responsible for not obtaining the highest possible price for property of the estate where he sells it honestly and with reasonable care and foresight. *In re Titus*, 86 Misc. Rep. 375, 148 N. Y. Supp. 359; *Nicholson* v. *Whitlock*, 57 S. C. 36, 35 S. E. 412. But where losses occur through the negligent management of the executor, or where they might have been avoided by ordinary diligence, he may be personally charged with such losses. *In re Skeers' Estate*, 236 Pa. 404, 84 Atl. 787, 42 L. R. A. (N. S.) 170; *In re Roach's Estate, supra.* And an executor is personally liable for the mistakes and defaults of a lawyer or other agent where he carelessly leaves the management of the estate in the hands of such a party. *In re Skeer's Estate, supra; In re Beer*, 124 N. Y. Supp. 423. Where, however, it is necessary to employ counsel, and the executor in good faith and with reasonable prudence makes the selection, he cannot be charged personally with losses due to errors or mistakes of counsel. *In re Sharp's Estate*, 61 N. J. Eq. 601, 48 Atl. 327.

In administering an estate, the executor must comply with the terms of the will. If the will is disregarded, the executor can be surcharged with any loss due to his transactions. *In re Fulmer's Estate*, 243 Pa. 226, 89 Atl. 974. See also *Northrup* v. *Browne*, 204 Fed. 224. Where investments contrary to the will are made, the executor is liable for any resulting loss without the right to any profit that he may make, and it is optional with the beneficiaries to hold the executor personally liable or to accept the investment. See *Villard* v. *Villard*, 219 N. Y. 482, 114 N. E. 789.

In the absence of provisions in the will or an order of court so directing him, an executor ordinarily has no power to continue the business of the decedent. *Western Newspaper Union* v. *Thurmond*, 27 Okla. 261, 111 Pac. 204, Ann Cas. 1912B, 727; *Willis* v. *Sharp*, 113 N. Y. 586, 21 N. E. 705, 4 L. R. A. 493. Oral requests from the decedent prior to his death are not sufficient to authorize a continuation of the business by the executor. *In re McCollum*, 80 App. Div. 362, 80 N. Y. Supp. 755.